IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 22311 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE K.M.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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HANIFABIBI @ SAJAN MUSTUFA ABDULBHAI MALEK (PATHAN) - Petitioner(s)

Versus

STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :

MS KD PARMAR for Petitioner(s) : 1,
RULE SERVED BY DS for Respondent(s) : 1 - 2.
GOVERNMENT PLEADER for Respondent(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE K.M.MEHTA

Date : 16/12/2005

ORAL JUDGMENT

1. Hanifabibi @ Sajan Mustufa Abdulbhai Malek(Pathan)-petitioner-detenu has filed this habeas

corpus petition under Article 226 and 227 of the Constitution of India challenging order of detention dated 20.09.2005 passed by Police Commissioner, Ahmedabad city under the provisions of the Gujarat Prevention of Anti-social Activities Act, 1985 (for short 'PASA Act') which is illegal, null, void and also violative of Article 14, 19, 21 and 22 of the Constitution of India. The present petition was filed on 07.10.2005 and this Court issued RULE on 18.11.2005 which was made returnable on 08.12.2005 and that is why this matter has come up before this Court for hearing and final disposal.

2. Heard, Ms. K.D. Parmar, learned Advocate for the petitioner and Mr. Pujari, learned A.G.P. in this behalf. Ms. Parmar, learned Advocate for the petitioner has invited my attention to the order of detention and committal order dated 20.09.2005 by which petitioner-detenu was arrested and sent to District Jail, Vadodara.

3. Learned Advocate for the petitioner has

further invited my attention to the grounds supplied in the order of detention. As the grounds of detention four criminal cases have been shown as registered against the petitioner-detenu. First offence is registered as being C.R. No.531/04 at Prohibition Station(South)dated 28.03.2004 punishable under Section 66B, 65E and 81 of the Bombay Prohibition Act. In connection with that case, the authority seized 40/- liters of country liquor along with one auto-rickshaw valued at Rs.70,000/-. Second offence is registered as being C.R. No.906/04 at Prohibition Station(South)dated 10.06.2004 punishable under Section 66B, 65E and 81 of the Bombay Prohibition Act. In connection with that case, the authority seized 40/- liters of country liquor along with one auto-rickshaw valued at Rs.60,000/-. Third First offence is registered as being C.R. No.531/04 at Prohibition Station(South)dated 28.03.2004 punishable under Section 66B, 65E and 81 of the Bombay Prohibition Act. In connection with that case, the authority seized 40/- liters of country liquor along with one auto-rickshaw valued at

Rs.70,000/-. Third offence is registered as being C.R. No.5048/05 at Danilimda police station dated 28.04.2005 punishable under Section 66B, 65E and 81 of the Bombay Prohibition Act. In connection with that case, the authority seized 20/- liters of country liquor. Fourth offence is registered as being C.R. No.5093/05 at Danilimda police station dated 31.07.2005 punishable under Section 66B, 65E and 81 of the Bombay Prohibition Act. In connection with that case, the authority seized 60/- liters of country liquor and one scooter valued at Rs.5,000/-.

4. Learned Advocate for the petitioner further stated that in the order of detention it was stated that the petitioner-detenu is carrying on anti-social activities and on the basis of four criminal cases registered against the petitioner-detenu she was termed as 'Bootlegger' within the meaning of Section 2(b) of the PASA Act. It was also stated that as said bootlegging activities of the detenu are dangerous and affecting maintenance of 'public order' and 'public health', order of detention has been

passed.

5. Learned Advocate for the petitioner has further stated that on the basis of four criminal cases registered against the petitioner-detenu, she cannot be termed as 'Bootlegger'. In support of this learned Advocate for the petitioner has placed reliance on the judgment of the apex Court in the case of Piyush Kantilal Mehta Vs. Commissioner of Police, Ahmedabad City & Another reported in AIR 1989 SC 491 and another judgment of the apex Court in the case of Darpan Kumar Sharma alias Dharban Kumar Sharma Vs. State of Tamil Nadu & Others reported in AIR 2003 SC 971. Learned Advocate for the petitioner has also placed reliance on Division Bench judgment of this Court in L.P.A. No.1139 of 1999 (Coram: Acting C.J., C.K. Thakkar & K.M. Mehta, J.) decided on 04.10.1999 in the case of Ashokbhai Jivraj @ Jivabhai Solanki Vs. Police Commissioner, Surat & Others reported in 2000 (1) GLH 393 and also another Division Bench judgment of this Court in L.P.A.

No.223 of 2000 (Coram: M.R. Calla & R.R. Tripathi, J.J.) decided on 22nd August, 2000 in the case of Ashok Makwana Vs. State of Gujarat. He has also relied upon a recent judgment of this Court in S.C.A. No.20420 of 2005 decided on 15.11.2005 in the case of Rajubhai Pratapbhai Panpatil Vs. Commissioner of Police, Surat City (Coram: K.M. Mehta,J.).

6. Heard, learned A.G.P. for respondent-detaining authority and he has filed affidavit-in-reply of one Mr. K.R. Kaushik , Police Commissioner, Ahmedabad city in this behalf and he has tried to defend the order of detention as well as grounds stated therein.

7. In view of the aforesaid facts and circumstances of the case, this Court is of the view that in this case only material remains is four criminal cases registered against the petitioner-detenu and on the basis of that it cannot be said that activity of the petitioner-detenu has become a threat to the maintenance of 'public order' and

'public health'. The offences committed by the petitioner pertains to prohibition to which I have already made reference in my earlier part of the judgment. Mere involvement of petitioner in bootlegging activities may not amount to dangerous activity by detenu and mere mention of them unless supported by any material cannot be said to be material and germane for the purpose of arriving at subjective satisfaction that the activity of petitioner is prejudicial to the maintenance of 'public order' and 'public health'.

8. I have heard learned Counsel for both the parties and after perusal of the record, I am of the view that the detaining authority has passed the order of detention without there being any credible or cogent material on record in this behalf. I have also considered factual and legal aspects emerging from the record of the petition and considered the rival submissions and the facts of the case and also in view of the judgment of the apex Court in the case of Piyush Kantilal Mehta(Supra) and another judgment

of the apex Court in the case of Darpan Kumar Sharma(Supra) in this behalf. I have also considered Division Bench judgment of this Court in the case of Ashokbhai Jivraj(Supra) and another Division Bench judgment in the case of Ashok Makwana(Supra) and also recent judgment of this Court in the case of Rajubhai Pratapbhai Panpatil(Supra). In view of the facts and circumstances of the present case and also ratio laid down in the cases mentioned above, the order of detention cannot be sustained and deserves to be quashed and set aside.

9. In the result, this petition is allowed and order of detention dated 20.09.2005 passed by Police Commissioner, Ahmedabad city is hereby quashed and set aside. Hanifabibi @ Sajan Mustufa Abdulbhai Malek(Pathan)-petitioner-detenu is, therefore, ordered to be set at liberty forthwith if he is not required in connection with any other case by the authority. Rule is made absolute to the aforesaid extent with no order as to costs. Direct service is permitted.

(K.M.MEHTA,J.)

Umesh/-